

existing facilities. After approval of such proposed procedure by the Commission, such carrier may request such authority in accordance with such procedure in lieu of filing separate applications for individual projects pursuant to §§ 63.01 and 63.03.

§ 63.07 Special procedures for non-dominant domestic common carriers.

(a) Any party that would be a non-dominant domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct, acquire, or operate any transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.

(b) Any non-dominant carrier that constructs or acquires (not by lease) initial or additional circuits shall report these circuits to the Commission semi-annually. These reports shall be filed on a consolidated basis on February 1 (covering facilities over which service was initiated during the preceding July 1 to December 31 period) and August 1 (covering facilities over which service was initiated during the preceding January 1 to June 30 period) of each year. These reports shall include:

- (1) Caption—"Section 63.07 Report," including initial certification file number (if assigned);
- (2) Name and address of carrier;
- (3) Type, number and terminal points of circuits added; (in addition, if service is provided via satellite, the identity of the satellite(s) and a transponder-by-transponder loading); and
- (4) Construction cost.

The Commission may request supplemental information.

(c) Non-dominant, facilities-based domestic common carriers subject to this section shall not engage in any construction or extension of lines that may have a significant effect on the environment as defined in § 1.1307 of this chapter without prior compliance with the Commission's environmental rules. See 1.1312 of this chapter.

[49 FR 34831, Sept. 4, 1984, as amended at 56 FR 13414, Apr. 2, 1991]

§ 63.08 Lines outside of a carrier's exchange telephone service area.

(a) An exchange telephone common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and 47 CFR 63.01 to provide lines, or for existing lines, outside of the exchange telephone service area of that carrier and any of its affiliates when the lines are:

(1) For its non-common carrier services; or

(2) Sold to an unaffiliated party.

(b) If a nondominant common carrier and its affiliates are not affiliated with an exchange telephone common carrier, the nondominant carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and 47 CFR 63.01 to provide lines, or for existing lines, of the types described in paragraph (a) of this section between any domestic points. "Nondominant" is defined as in § 61.15(a) of this chapter.

(c) A common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and § 63.01 to discontinue, reduce, or impair other non-common carrier service.

(d) A common carrier's costs of providing lines for non-common carrier offerings and costs of providing such offerings must be entered on books of account separate from those for its common carrier services.

(e) As used above, the term "affiliate" bars any financial or business relationship whatsoever by contract or otherwise, directly or indirectly between the carrier and the customer, except only the carrier-user relationship.

NOTE TO PARAGRAPH (e): Examples of situations in which a carrier and its customer will be deemed to be controlled or having a relationship include the following, among others: Where one is the debtor or creditor of the other (except with respect to charges for communication services); where they have a common officer, director, or other employee at the management level; where there is any element of ownership or other financial interest by one in the other; and where any part has a financial interest in both.

[49 FR 21335, May 21, 1984, as amended at 61 FR 10476, Mar. 14, 1996]

§ 63.10 Regulatory classification of U.S. international carriers.

(a) Unless otherwise determined by the Commission, any party authorized to provide an international communications service under this part shall be classified as either dominant or non-dominant for the provision of particular international communications services on particular routes as set forth in this section. The rules set forth in this section shall also apply to determinations of regulatory status pursuant to §§ 63.11 and 63.13. For purposes of paragraphs (a)(1) through (a)(3) of this section, “affiliation” and “foreign carrier” are defined as set forth in § 63.18(h)(1)(i) and (ii), respectively.

(1) A U.S. carrier that has no affiliation with, and that itself is not, a foreign carrier in a particular country to which it provides service (i.e., a destination country) will presumptively be considered non-dominant for the provision of international communications services on that route;

(2) A U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is a monopoly in a destination country will presumptively be classified as dominant for the provision of international communications services on that route; and

(3) A U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is not a monopoly in a destination country and that seeks to be regulated as non-dominant on that route bears the burden of submitting information to the Commission sufficient to demonstrate that its foreign affiliate lacks the ability to discriminate against unaffiliated U.S. carriers through control of bottleneck services or facilities in the destination country. Such a demonstration should address the factors that relate to the scope or degree of the foreign affiliate’s bottleneck control, including those listed in Section § 63.18(h)(8).

(4) A carrier that is authorized under this part to provide to a particular destination country a particular international communications service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier’s international switched services (either directly or indirectly through the resale

of another U.S. resale carrier’s international switched services), shall presumptively be classified as nondominant for the provision of the authorized service. The existence of an affiliation with a U.S. facilities-based international carrier shall be assessed in accordance with the definition of affiliation contained in § 63.18(h)(1)(i), except that the phrase “U.S. facilities-based international carrier” shall be substituted for the phrase “foreign carrier.”

(b) Any party that seeks to defeat the presumptions in paragraphs (a)(1), (a)(2) and (a)(4) of this section shall bear the burden of proof upon any issue it raises as to the proper classification of the U.S. carrier.

(c) Any carrier classified as dominant for the provision of particular services on particular routes under this section shall comply with the following requirements in its provision of such services on each such route:

(1) File international service tariffs on 14-days notice without cost support;

(2) Maintain complete records of the provisioning and maintenance of basic network facilities and services procured from its foreign carrier affiliate or from an allied foreign carrier, including, but not limited to, those it procures on behalf of customers of any joint venture for the provision of U.S. basic or enhanced services in which the U.S. and foreign carrier participate, which information shall be made available to the Commission upon request;

(3) Obtain Commission approval pursuant to § 63.18 before adding or discontinuing circuits; and

(4) File quarterly reports of revenue, number of messages, and number of minutes of both originating and terminating traffic within 90 days from the end of each calendar quarter.

[57 FR 57966, Dec. 8, 1992, as amended at 60 FR 67337, Dec. 29, 1995; 61 FR 15727, Apr. 9, 1996]

EFFECTIVE DATE NOTE: At 61 FR 15727, Apr. 9, 1996, in § 63.10, paragraphs (a) introductory text, (3), and (4) were amended; paragraph (c)(3) was revised. This amendment contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.